



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

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September 30, 2004

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
#7003-2260-0001-7778-9579

Ref: 8ENF-W

Melvin F. Zelmer, President,
Managing Member & Registered Agent
Zelmer, Inc., and
Spencer Heights, LLC
27172 469th Avenue
Tea, South Dakota 57064

Re: Findings of Violation and Administrative
Compliance Order,
Docket No. **CWA-08-2004-0076**

and

Administrative Compliance Order on Consent,
Docket No. **CWA-08-2004-0075**

Dear Mr. Zelmer:

Based on our review of all available information, the United States Environmental Protection Agency ("EPA") has determined that Zelmer, Inc. and Spencer Heights, LLC ("Respondents"), are in violation of sections 301, 402, and 404 of the Clean Water Act, as amended ("CWA"), 33 U.S.C. §§ 1311, 1342, and 1344. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), among other things, prohibits the discharge of pollutants into waters of the United States except as in compliance with sections 402 and 404 of the CWA, 33 U.S.C. §§ 1342 and 1344. Section 402 of the CWA requires that an authorizing National Pollutant Discharge Elimination System ("NPDES") permit be obtained prior to the discharge of storm water into waters of the United States. Section 404 of the CWA requires that an authorizing permit be obtained from the United States Army Corps of Engineers ("Corps") prior to the discharge of dredged or fill material into waters of the United States. See, 33 U.S.C. § 1311. Waters of the United States include both surface waters and wetlands as defined by 40 C.F.R. § 122.2 and

33 C.F.R. § 328.3.

Specifically, EPA has determined that the Respondents discharged storm water from their construction site in Lincoln County, South Dakota without first obtaining an NPDES permit and, thereafter, failed to implement the requirements of the State of South Dakota's General Permit for Discharges Associated with Construction Activities. Furthermore, EPA has determined that the Respondents discharged dredged and fill material at the Lincoln County site without first obtaining an appropriate section 404 permit from the Corps. These discharges of pollutants into an unnamed tributary of Ninemile Creek and its adjacent wetlands have occurred on Respondents' property at a site located in the northeast quarter of Section 26, Township 100 North, Range 51 West, in Lincoln County, South Dakota.

Enclosed please find a document entitled "Findings of Violation and Administrative Order for Compliance" ("Order"), which specifies the nature of the violations and describes actions necessary in order for the Respondents to achieve compliance with sections 301 and 404 of the CWA. Pursuant to this Order, within five days after Respondents' receipt of this Order, Respondents must inform EPA in writing of their intent to fully comply with the Order. Also enclosed is the signed "Administrative Compliance Order on Consent" ("Consent Order"), detailing the violations and those actions necessary to achieve compliance with section 402 of the CWA, which Respondents previously reviewed and signed. The Consent Order is now final and Respondents must begin to undertake the steps set forth in the Consent Order according to the time-frames set forth therein. EPA's authority for such actions are provided under section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3).

The CWA requires the Administrator of EPA to take all appropriate enforcement action necessary to secure prompt compliance with the CWA and any order issued thereunder. Section 309 of the CWA authorizes a variety of possible enforcement actions, including filing of a civil or criminal action, administrative penalty action, and/or debarment from Federal contracts and/or loans for any noncompliance with the CWA or an order issued pursuant to the CWA. Please be advised that failure to comply with the requirements of the Order or the Consent Order is a violation of that Order and may be enforced through the mechanisms referenced above. Please also be advised that the issuance of these Orders does not preclude civil or criminal actions in U.S. District Court pursuant to sections 309(b) or (c) of the CWA, 33 U.S.C. §§ 1319(b) or (c), or assessment of civil penalties pursuant to sections 309(d) or (g) of the CWA, 33 U.S.C. §§ 1319(d) or (g), for the violations cited in the Order or the Consent Order or for any other violations that Zelmer, Inc. and/or Spencer Heights, LLC may have committed prior to or may commit after the issuance of the enclosed Orders.

EPA has agreed to notify small businesses of their right to comment on regulatory enforcement activities at the time of an Agency enforcement activity pursuant to the Small Business Regulatory Enforcement and Fairness Act ("SBREFA"). SBREFA does not eliminate Respondents' responsibility to comply with the Act or this Order, nor does it create any new rights or defenses under law. We have enclosed a SBREFA information sheet containing further information on compliance assistance resources and tools available to small businesses.

Please review the Order and the Consent Order carefully. If you have any questions, the

most knowledgeable people on my staff are Sheldon Muller, Enforcement Attorney, at 303-312-6916, Jennifer Meints, NPDES Enforcement Officer, at 303-312-6334, and Kenneth Champagne, Section 404 Enforcement Officer, at 303-312-6608.

Sincerely,

SIGNED

Carol Rushin

Assistant Regional Administrator

Office of Enforcement, Compliance
and Environmental Justice

Enclosures

1. Section 402 Administrative Compliance Order on Consent
2. Section 404 Findings of Violation and Administrative Order for Compliance
3. SBREFA Information Sheet

cc: Arlie Brende, Esq., w/enclosures
Howard Kenison, Esq., w/enclosures
Jeanne Goodman, SDDENR, w/enclosures
David LaGrone, U.S. Army Corps of Engineers, w/enclosures
Steven Naylor, U.S. Army Corps of Engineers, w/enclosures
Tina Artemis, EPA, 8RC, w/enclosures

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

IN THE MATTER OF:)	FINDINGS OF VIOLATION AND
)	ADMINISTRATIVE ORDER FOR
Zelmer, Inc., and)	COMPLIANCE
Spencer Heights, LLC)	
27172 469th Avenue)	
Tea, South Dakota 57064)	Docket No. CWA-08-2004-0076
)	
Respondents.)	

I. STATUTORY AUTHORITY

This Findings of Violation and Administrative Order for Compliance (“Order”) is issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency (“EPA”) by section 309 of the Clean Water Act (“CWA”), 33 U.S.C. § 1319. This authority has been properly delegated to the Assistant Regional Administrator of the Office of Enforcement, Compliance and Environmental Justice, EPA Region 8. The Order is based on the findings of violation of section 301(a) of the CWA, 33 U.S.C. § 1311(a), which, among other things, prohibits the discharge of pollutants into waters of the United States except as in compliance with section 404 of the CWA, 33 U.S.C. § 1344.

II. FINDINGS OF VIOLATION

1. Respondent Zelmer, Inc. is a South Dakota corporation and Respondent Spencer Heights, LLC is a South Dakota limited liability company, both having a registered office address of 27172 469th Avenue, Tea, South Dakota 57064. Zelmer, Inc. and Spencer Heights, LLC both are currently in good standing with

the South Dakota Secretary of State's office and their registered agent is Melvin F. Zelmer.

2. At all relevant times, Zelmer, Inc. and Spencer Heights, LLC. owned, controlled and/or operated the property containing an unnamed tributary of Ninemile Creek and its adjacent wetlands located in Section 26, Township 100 North, Range 51 West, Lincoln County, South Dakota (the "Spencer Heights Property").
3. The unnamed tributary is tributary to Ninemile Creek, which is tributary to the Big Sioux River, which is tributary to the Missouri River. The Big Sioux River and the Missouri River are, and were at all relevant times, navigable, interstate waters.
4. In a letter to the U.S. Army Corps of Engineers' ("Corps") South Dakota Regulatory Office dated February 20, 2002, Respondents inquired about the jurisdictional status of wetlands located on the Spencer Heights Property in an effort to initiate the permitting process for the development of a residential subdivision. On or about March 15, 2002, Respondents submitted an Application for Department of the Army Permit to the Corps for the proposed residential development. As a follow-up to the February 20, 2002 letter and to review the proposed plans associated with the March 15, 2002 permit application, the Corps conducted a site inspection, including a jurisdictional determination, on April 2, 2002. After review of the proposed plans for the residential development, the Corps advised Respondents to re-design the plans to only include those wetland impacts associated with the construction of two linear transportation crossings consisting of a culverted road crossing and a recreational trail crossing, thus avoiding all other wetland impacts on the Spencer Heights Property.

5. On or about April 23, 2002, Respondents submitted a revised permit application to the Corps, which proposed the construction of: (1) two linear transportation crossings consisting of a culverted road crossing and a recreational trail crossing, collectively impacting 0.23 acres of wetlands; and (2) a deep pond by dredging a large wetland of approximately 7.85 acres. The project also proposed to create 0.91 acres of wetlands around the pond as mitigation for the loss of the 0.23 acres of wetlands due to the construction of the two linear transportation crossings. In response to Respondents' revised permit application, the Corps advised Respondents that dredging a wetland to create a pond was not regulated by Section 404 of the CWA if the excavation activity only resulted in "incidental fallback" within the meaning of 33 C.F.R. § 323.2(d). The Corps instructed Respondents that a Section 404 permit would be necessary if dredged material excavated from the pond was to be discharged into waters of the United States. Respondents agreed that the dredged material would be deposited in an upland location and that no dredged materials would be discharged into waters of the United States.
6. In a letter dated April 26, 2002, the Corps determined that Respondents' proposal to construct the culverted road crossing and recreational trail crossing referred to in Paragraph 5 of Section II of this Order was authorized by a Department of Army Nationwide Permit 14: Linear Transportation Crossings. The Corps considered the proposed dredging of the wetland to create a pond independent of the scope of this Nationwide 14 authorization, as long as the dredging activity would not result in a discharge of dredged or fill material.

7. On April 25, 2003, the Corps conducted an inspection of the Spencer Heights Property after receiving complaints of impacts to wetlands. The Corps found, and EPA through issuance of this Order finds, that during construction of the pond, Respondents and/or their agents discharged dredged material into waters of the United States by sidecasting dredged material into the boundaries of the wetlands that encompassed the pond. The Corps also found, and EPA hereby finds, that Respondents and their agents, during construction of the road and recreational trail crossing, discharged dredged or fill material to wetlands acreage that greatly exceeded the 0.23 acres of impacts to wetlands that was authorized by the Nationwide Permit 14. Furthermore, the Corps found, and EPA hereby finds, that Respondents did not install a culvert in the road crossing, resulting in erosion of a wetland inlet channel due to the impounding of water.
8. By letter dated May 23, 2003, the Corps found, and EPA through issuance of this Order finds, that Respondents' actions, as described in paragraph 7 of Section II of this Order, required prior Corps authorization and that the required authorization had not been granted. Further, the Corps directed Respondents to "cease and desist" any further unauthorized work at the Spencer Heights Property.
9. On May 27 and 28, 2003 the Corps conducted follow-up inspections on Respondents' property due to additional public complaints being filed. Additionally, during this time the Corps conducted a partial wetland delineation in response to concerns expressed by the South Dakota Department of Game, Fish and Parks. The Corps' inspections found, and EPA through issuance of this

Order finds, that since the Corps' previous inspection on April 25, 2003, Respondents and their agents discharged additional dredged or fill material into an unnamed tributary of Ninemile Creek and its adjacent wetlands located on the Spencer Heights Property. The Corps' partial wetland delineation established the location of some of the wetland boundaries on the Spencer Heights Property and determined that a considerable amount of unauthorized dredged or fill material had been discharged into waters of the United States on the Spencer Heights Property. The Corps estimated that approximately 2.94 acres of wetlands had been filled with dredged or fill material without authorization. Further, Respondents' dredging of a substantial amount of wetlands to create a pond on the Spencer Heights Property, where such dredging led to the discharge of the dredged materials into a portion of the wetlands being dredged, was also unauthorized.

10. The activities described in paragraphs 7 and 9 of Section II of this Order were performed using common earthmoving vehicles and equipment, including excavators, all of which were operated by Respondents and/or by one or more individuals on behalf of Respondents.
11. Respondents are "persons" within the meaning of section 502(5) of the CWA, 33 U.S.C. § 1362(5).
12. The discharged dredged material referenced in paragraphs 7 and 9 of Section II of this Order are, and were at all relevant times, "dredged material" within the meaning of

33 C.F.R. § 323.2(c) and “pollutants” within the meaning of section 502(6) of the CWA, 33 U.S.C. § 1362(6).

13. The discharged fill material referenced in paragraphs 7 and 9 of Section II of this Order are and were at all relevant times “fill material” within the meaning of 33 C.F.R. § 323.2(e) and “pollutants” within the meaning of section 502(6) of the CWA, 33 U.S.C. § 1362(6).
14. The unnamed tributary and its adjacent wetlands filled and disturbed by Respondents’ unauthorized activities provided various functions and values, including: wildlife habitat for birds, mammals, reptiles and amphibians; water quality enhancement; flood attenuation; and/or aesthetics.
15. The vehicles and equipment described in paragraph 10 of Section II of this Order are and were at all relevant times each a “point source” within the meaning of section 502(14) of the CWA, 33 U.S.C. § 1362(14).
16. The unnamed tributary of Ninemile Creek and its adjacent wetlands referenced in paragraphs 2 and 3 of Section II of this Order are and were at all relevant times “waters of the United States” within the meaning of 33 C.F.R. § 328.3(a) and therefore “navigable waters” within the meaning of section 502(7) of the CWA, 33 U.S.C. § 1362(7).
17. The placement of dredged or fill material into the unnamed tributary and its adjacent wetlands constitutes the “discharge of pollutants” within the meaning of section 502(12) of the CWA, 33 U.S.C. § 1362(12).

18. Section 301(a) of the CWA, 33 U.S.C. § 1311, prohibits, among other things, the discharge of pollutants by any person into waters of the United States except as in compliance with section 404 of the CWA, 33 U.S.C. § 1344.
19. Section 404 of the CWA, 33 U.S.C. § 1344, sets forth a permitting system authorizing the Secretary of the Army, acting through the Chief of Engineers of the Corps, to issue permits for the discharge of dredged or fill material into navigable waters which are defined as waters of the United States.
20. 33 C.F.R. § 323.3(a) specifies that, unless exempted pursuant to 33 C.F.R. § 323.4, a permit issued by the Corps is required for the discharge of dredged or fill material into waters of the United States.
21. Except for the two linear transportation crossings described in paragraphs 4, 5, and 6 of Section II of this Order, Respondents are not and never have been authorized by a permit issued pursuant to section 404 of the CWA, 33 U.S.C. § 1344, to conduct any of the activities described in paragraphs 7 and 9 of Section II of this Order. Additionally, the impacts to wetlands described in paragraphs 7 and 9 of Section II of this Order exceeded, and were therefore in violation of, the April 26, 2002 authorization granted by the Corps pursuant to Nationwide Permit 14: Linear Transportation Crossings for the two linear transportation crossings described in paragraphs 4, 5, and 6 of Section II of this Order.
22. The activities conducted by Respondents and/or their agents as described in paragraphs 7 and 9 of Section II of this Order violate section 301 of the CWA, 33 U.S.C. § 1311. Each discharge of pollutants from a point source by

Respondents into waters of the United States without the required permits issued pursuant to section 404 of the CWA, 33 U.S.C. § 1344, constitutes a violation of section 301(a) of the CWA, 33 U.S.C. § 1311(a). Each day the discharges remain in place without the required permits constitutes an additional day of violation of section 301(a).

23. The removal of the dredged or fill material illegally discharged into waters of the United States at Respondents' property and restoration of the impacted waters, including the unnamed tributary of Ninemile Creek and its adjacent wetlands, to a condition that closely approximates their condition and function prior to the discharge of the dredged or fill material, can be achieved as a practical matter through commonly used methods of construction, digging, revegetation, and best management practices.
24. Activities to be carried out under this Order are remedial, not punitive, and are necessary to achieve the CWA's objective "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters," as specified in section 101(a) of the CWA, 33 U.S.C. § 1251(a). The removal and restoration described in paragraph 23 of Section II of this Order are appropriate to alleviate actual and potential harm to water quality, aquatic habitat, and wildlife habitat caused by Respondents' unpermitted activities.
25. This Order was issued after consultation and coordination with the United States Army Corps of Engineers, Omaha District.

III. ORDER

Based upon the foregoing FINDINGS OF VIOLATION, and pursuant to the authority vested in the Administrator of the EPA pursuant to sections 308 and 309(a) of the CWA, 33 U.S.C. §§ 1318 and 1319(a), as properly delegated to the Assistant Regional Administrator of the Office of Enforcement, Compliance and Environmental Justice, EPA Region 8, it is hereby ORDERED:

Respondents shall immediately terminate all unauthorized discharges of dredged or fill material, now and in the future, into waters of the United States, unless specifically authorized by the Corps under a valid permit issued pursuant to section 404 of the CWA, 33 U.S.C. § 1344. This prohibition includes all mechanical land clearing, dredging, filling, grading, leveling, installation of utilities, construction, and any other activities that result in a discharge of dredged or fill material into waters of the United States.

Within five (5) calendar days of receipt of this Order, Respondents shall inform EPA in writing of Respondents' intent to fully comply with the Order. EPA requests that Respondents meet with EPA within fourteen (14) calendar days of issuance of this Order if there are concerns or questions about the requirements of the Order. The scheduling of such a meeting shall not alter Respondents' responsibility to meet any of the deadlines specified in this Order unless otherwise clearly stated in a written communication to Respondents by EPA.

Upon EPA approval of the Restoration Plan required by paragraph 7 of Section III of this Order, Respondents shall remove all dredged or fill materials that were

discharged as a result of the violations identified in this Order and restore the unnamed tributary of Ninemile Creek and its adjacent wetlands, including those wetlands that were dredged to create a pond on the Spencer Heights Property, to their pre-impact conditions and grade, unless otherwise approved by EPA in the Restoration Plan.

All dredged or fill material removal and restoration activities shall be conducted in accordance with an EPA-approved Restoration plan prepared by a consultant experienced in stream and wetland restoration whose qualifications are acceptable to EPA. The consultant also shall directly supervise all work performed pursuant to the EPA-approved Restoration Plan. A statement of the consultant's qualifications, including professional resume and business references, shall be submitted to EPA within twenty-one (21) calendar days of receipt of this Order.

All dredged or fill material removal and restoration activities conducted pursuant to this Order and involving the use of heavy construction equipment shall be undertaken by an equipment operator experienced in stream and wetland restoration whose qualifications are acceptable to EPA. A statement of the equipment operator's qualifications, including professional resume and business references, shall be submitted to EPA within twenty-one (21) calendar days of receipt of this Order.

Within ten (10) calendar days of any disapproval by EPA of the qualifications of the consultant or equipment operator referenced in paragraphs 4 and 5 of Section III

of this Order, Respondents shall submit the professional resume of another qualified individual for approval by EPA.

Within forty-five (45) calendar days of the receipt of this Order, Respondents shall submit to EPA for review and comment a Restoration Plan, prepared by the consultant referenced in paragraph 4 of Section III of this Order, for removing the discharged dredged and fill material from the unnamed tributary of Ninemile Creek and its adjacent wetlands and restoring the unnamed tributary and its adjacent wetlands, including those wetlands that were dredged to create a pond on the Spencer Heights Property, to their pre-impact channel configuration and/or grade. The removal and restoration work reflected in the Restoration Plan shall include: (1) removal of all dredged and fill material that was deposited into wetlands, the unnamed tributary, or other waters of the United States as a result of the construction of the two linear crossings, the excavation of the pond, or any other activity performed at the Spencer Heights Property; and (2) restoration, to their pre-impact condition, of all wetlands (including those wetlands that were dredged to create a pond on the Spencer Heights Property), the unnamed tributary, and other waters of the United States that were impacted by the construction of the two linear crossings, the excavation of the pond, and any other activity performed at the Spencer Heights Property.

The Restoration Plan shall be prepared in accordance with “U.S. Environmental Protection Agency, Region 8 - Clean Water Act § 404 Enforcement: Removal/Restoration Plans and Habitat Mitigation/Monitoring Proposals,” attached

hereto as Exhibit A, and with the Clean Water Act § 404(b)(1) guidelines, as specified in 40 C.F.R. Part 230. In addition, the Restoration Plan shall include:

- 27. A complete assessment of the impacts to the unnamed tributary of Ninemile Creek, its adjacent wetlands, including those wetlands that were dredged to create a pond on the Spencer Heights Property, and any other waters of the United States due to the Respondents' actions as described in paragraphs 7 and 9 of Section II of this Order;
- 26. Locations and delineations of all wetlands in or adjoining the Spencer Heights Property. The delineation shall be performed in accordance with the procedures set forth in the "Corps of Engineers Wetlands Delineation Manual, January 1987 - Final Report," including the procedures for atypical situations, and subsequent interpretive guidance published by the Corps. Additionally, the wetland delineation report shall include written justification for any findings and/or conclusions which are different than those included in the Corps' May 27 and 28, 2003 partial wetland delineation;
- 25. A detailed work plan and schedule for all of the work to be accomplished by the Restoration Plan, including the application for any required permits, providing for completion of all aspects of the restoration work no later than sixty (60) days after EPA approves the Restoration Plan;
- 24. Locations of the existing natural features and man-made improvements, including all surface disturbance, fills, channel excavations, road crossings, culverts, structures, and any other work, including a corresponding map (scale 1":100') of these locations;

- 23. Grading, planting, and monitoring plans, measurable criteria for success of restoration, and provisions for proper disposal of any excess soils or other materials generated during construction and restoration;
- 22. Detailed professional drawings of all of the work to be accomplished by the Restoration Plan, including plan and profile drawings with control elevations; and
- 21. A description of all costs necessary to complete the work to be accomplished by the Restoration Plan, including the costs of all studies, consultations, permits, monitoring, and construction.

EPA will review the Restoration Plan and approve it, approve it with modifications, or reject it with comments. If EPA rejects the Restoration Plan, Respondents shall, within fifteen (15) calendar days of receipt of EPA's rejection letter, submit a revised plan that corrects the deficiencies identified by EPA.

Upon receiving EPA's written approval of the Restoration Plan, Respondents shall obtain all necessary permits to implement the EPA-approved plan and then commence all restoration activities in accordance with the approved plan, including the time frames specified therein, and all granted permits.

Respondents shall demonstrate that all necessary permits have been granted by providing complete copies of all such permits, and any amendments thereto, to EPA within seven (7) calendar days of issuance of each permit.

This Order is not a permit or an authorization to place or discharge dredged or fill material in waters of the United States. Respondents shall consult with the Corps at the address and telephone number below to determine if any work to be performed pursuant to this Order requires a permit from the Corps under section 404 of the CWA. If required, Respondents shall obtain such permit(s) and provide a copy to EPA pursuant to paragraph 10 of Section III of this Order prior to initiating any work that is to be performed pursuant to this Order.

U.S. Army Corps of Engineers
South Dakota Regulatory Office
28563 Powerhouse Road, Room 118
Pierre, SD 57501
Telephone: 605-224-8531

Respondent shall submit three (3) copies of the Restoration Plan, all notifications, and related correspondence to:

Kenneth Champagne, 8ENF-W
U.S. Environmental Protection Agency, Region 8
999 18th Street, Suite 300
Denver, CO 80202-2466
Telephone: 303-312-6608
Facsimile: 303-312-6409

A copy of the Restoration Plan, all notifications, and related correspondence shall also be provided to:

Sheldon H. Muller, 8ENF-L
U.S. Environmental Protection Agency, Region 8
999 18th Street, Suite 300
Denver, CO 80202-2466
Telephone: 303-312-6916
Facsimile: 303-312-6953

In addition to the notification requirement set forth in paragraph 12 of Section III of this Order, after issuance of any Corps authorization for restoration work, Respondents shall submit all notifications and correspondence to the Corps in accordance with the terms and conditions in the Corps permit.

Any deliverables, plans, reports, specifications, schedules and attachments required by this Order are, upon approval by EPA, incorporated into this Order. Any non-compliance with such EPA-approved deliverables, plans, reports, specifications, schedules, and attachments shall be deemed a failure to comply with this Order and subject to EPA enforcement.

Respondents shall allow, or use their best efforts to allow, access by any authorized representatives of EPA or its contractors, the Corps, the Natural Resources Conservation Service, the U.S. Fish and Wildlife Service, the South Dakota Game, Fish, and Parks, and the South Dakota Department of Environment and Natural Resources, upon proper presentation of credentials, to sites and records relevant to this Order for any of the following purposes:

- a. To inspect and monitor progress of the activities required by this Order;
- b. To inspect and monitor compliance with this Order; and

c. To verify and evaluate data and other information submitted to EPA.

This Order shall in no way limit or otherwise affect EPA's authority, or the authority of any other governmental agency, to enter the site, conduct inspections, have access to records, issue notices and orders for enforcement, compliance, or abatement purposes, or monitor compliance pursuant to any statute, regulation, permit, or court order.

Respondents' obligations under this Order are joint and several. This Order shall be effective upon receipt by Respondents.

Please be advised that section 309(d) of the CWA, 33 U.S.C. § 1319(d), authorizes civil penalties of up to \$27,500 per day for each violation which occurred before March 15, 2004, and \$32,500 per day for each violation thereafter, of section 301 of the CWA, 33 U.S.C. § 1311, and for each violation of an order issued by the Administrator of EPA under section 309(a) of the CWA, 33 U.S.C. § 1319(a), including this Order. Additionally, section 309(g) of the CWA, 33 U.S.C. § 1319(g), authorizes EPA to impose administrative penalties for violations of the CWA. Further, section 309(c) of the CWA, 33 U.S.C. § 1319(c), authorizes fines and imprisonment for willful or negligent violations of the CWA. Issuance of this Order shall not be deemed to be an election by the United States to forego any civil or criminal action to seek penalties, fines, or other appropriate relief under the CWA for violations giving rise to the Order.

Compliance with the terms and conditions of the Order shall not be construed to relieve

Respondents of their obligation to comply with any applicable Federal, state, or local law or regulation. Failure by Respondents to complete the tasks described herein in the manner and time frame specified pursuant to this Order may subject Respondents to a civil action under section 309 of the CWA, 33 U.S.C. § 1319, for violation of this Order.

DATED this 30TH day of September, 2004.

SIGNED

Carol Rushin
Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

**IF YOU WOULD LIKE COPIES OF THE ATTACHMENTS, PLEASE CONTACT THE
REGIONAL HEARING CLERK.**

THIS DOCUMENT WAS FILED IN THE RHC'S OFFICE ON SEPTEMBER 30, 2004.



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